IN THE

Supreme Court of the United States

October Term, 1956
No. 442

TWENTIETH CENTURY-FOX FILM CORPORATION, a Corporation,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF FOR PETITIONER.

Argument.

This reply brief is for the limited purpose of pointing out two particular incorrect and misleading statements in respondent's brief in opposition.

Respondent states that when Section 3469 of the 1939 Internal Revenue Code was enacted the term "transportation" had already acquired a well developed meaning through its use in the Motor Carrier Act of 1935 and the Civil Aeronautics Act of 1938. (Resp. Br. 5). Although this statement is more properly addressed to the merits of the cause, it also violates all accepted rules of statutory construction. It is well established that separate acts on distinct subjects will not be read together. [*Walling v. Portland Terminal Co.*, 330 U. S. 148, 150, 67 Sup. Ct. 639; 91 L. ed. 809, 812 (1947); *Northern Pac. Ry. Co. v. United States,* 156 F. 2d 346 (7th Cir., 1946), aff'd 330 U. S. 248; 67 Sup. Ct. 747, 91 L. ed. 876 (1947).]

It has been specifically held that the meaning of "transportation" in the Interstate Commerce Act has "slight force, if any" in determining the meaning of the same term in the Natural Gas Act. [*Federal Power Commission v. East Ohio Gas Co.*, 338 U. S. 464, 470, fn. 9, 70 Sup. Ct. 266, 94 L. ed. 268, 276, fn. 9 (1950).]

Respondent further states that taxpayer's prime purpose in chartering airplanes from Mantz was to have its employees carried from the place where they were picked up to other localities in order to enable the employees to perform their functions. (Resp. Br. 7.) Respondent's gratuitous conception of what was taxpayer's prime purpose in chartering these flights has no support in the record. To the contrary the facts as stipulated and found clearly set forth that the *purpose* of each flight involved was either actual aerial photography or aerial observation. (Pet., App. C. pp. 12-15.) This is not a case, therefore, as respondent states, of working while traveling but one of working from the air, without travel being any material part of such work.

Concisely stated, petitioner's position is that the sole purpose of the flights in question was aerial photography or observation and that such movement in the air does not constitute "transportation" as that term is commonly understood and as it is used in Section 3469 of the 1939 Internal Revenue Code.

Respectfully submitted,

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